



AGENDA DATE: 4/19/00
AGENDA ITEM: 8C

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

PETITION OF NETWORK ACCESS SOLUTIONS)	ORDER AUTHORIZING
CORPORATION FOR AUTHORITY TO SELL UP)	ISSUANCE OF
TO 5,550,177 SHARES OF COMMON STOCK)	COMMON STOCK
TO THE PUBLIC)	DOCKET NO. TF00030152

Fred S. Grygiel, Chief Economist, Mark C. Beyer, Manager, Leo M. Lim, Supervising Accountant and Julie Huff, Accountant II, Office of the Economist on behalf of the Board of Public Utilities.

Shook, Hardy & Bacon, LLP, Washington, DC 20005-2004 by Rodney L. Joyce, Esq. for Network Access Solutions Corp.

BY THE BOARD:

Network Access Solutions Corporation ("Petitioner"), a public utility of the State of New Jersey certified as a competitive local exchange carrier, filed a petition on March 7, 2000 pursuant to N.J.S.A. 48:3-9 requesting authority to sell up to 5,550,177 shares of its common stock to the public in accordance with the S-1 Registration Statement that it has filed with the Securities and Exchange Commission. The petitioner estimates in the S-1 that the sale will result in roughly \$134 million in proceeds after expenses assuming that it sells the stock for an average of \$30 per share. Petitioner's common stock is traded on the NASDAQ and has ranged in price from \$25-\$35 per share in the first three months of this year.

Petitioner, a Delaware corporation, by its Certificate of Incorporation is presently authorized to issue up to 150,000,000 shares of common stock with a par value of \$.001 per share, of which 53,831,997 shares are issued and 8,550,000 shares are in treasury stock. One million five hundred thousand shares of Series B Convertible Preferred stock also are outstanding. On March 7, 2000, Petitioner sold those shares to two private investors for \$100 per share. The Board approved the sale of the Series B Convertible Preferred shares by order dated February 29, 2000.¹

Proceeds from the sale of common stock will be used to finance capital expenditures, for working

¹ See Order of Approval in BPU Docket. No. TF000200850.

capital and general corporate purposes, and to finance operating losses that the company expects to incur as it expands its telecommunications network. While the petitioner plans to use most proceeds from the sale of the new common shares to expand its network into 20 metropolitan areas in states other than New Jersey, some proceeds will be used to expand service in New Jersey. By this summer, the petitioner will provide service in about 80 New Jersey communities, most of which are in and around Trenton and the New York and Philadelphia suburbs.

By letter dated April 17, 2000, the Division of the Ratepayer Advocate ("Advocate") stated that the Board should withhold its approval of Petitioner's application at this time and that Petitioner should provide more information on the proposed stock issuance. The Advocate's basic argument is that Petitioner's application does not at present contain information sufficient to show that the proposed stock issuance will provide tangible benefits to the New Jersey market. The Advocate also argues that the Board may withhold its approval of a proposed stock issuance if it determines that it will be of doubtful benefit to the utility.

Pursuant to N.J.S.A. 48:3-9, the Board approves stock issuances when it determines that they are to be made in accordance with law and when it is satisfied that the purpose of the proposed transaction is appropriate. In this case, it is clear that the proposed stock issuance is to be entered into in accordance with law and that the proposed use of the proceeds associated therewith is appropriate. Moreover, while there is no guarantee in this regard, especially given the competitive environment in which Petitioner operates, the Board is satisfied that the stock issuance will not have an adverse impact on Petitioner's operations in New Jersey.

The Board, after investigation and consideration of the petition and exhibits herein, FINDS that the proposed sale of up to 5,550,177 shares of common stock is to be made in accordance with the law, is not contrary to the public interest, and approving the purposes thereof; HEREBY AUTHORIZES the issuance and sale by Network Access Solutions Corporation of up to 5,550,177 shares of its common stock to the public in accordance with the terms of the company's S-1 Registration Statement, and the transaction is HEREBY APPROVED, subject to the following provisions.

1. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by petitioner, nor that the shares of common stock herein authorized to be issued will be represented by tangible assets of commensurate value or investment cost.
2. This Order shall not affect or in any way limit the exercise of the authority of this Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the petitioner.

3. The authority granted in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by December 31, 2000.

DATED: April 19, 2000

BOARD OF PUBLIC UTILITIES
BY:

[SIGNED]
HERBERT H. TATE
PRESIDENT

[SIGNED]
CARMEN J. ARMENTI
COMMISSIONER

[SIGNED]
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

[SIGNED]
EDWARD D. BESLOW
ACTING SECRETARY